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 9 **IN THE UNITED STATES DISTRICT COURT FOR THE**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

12 **UNITED STATES OF AMERICA and**)
 13 **DONNA DILORETO, Revenue Officer,**) Case No.: 3:08-CV-00108-JL
 14 **Petitioners,**)
 15 **v.**)
 16 **ELLIS RAY MOSELEY,**) **SECOND DECLARATION OF**
 17 **Respondent.**) **THOMAS M. NEWMAN**
 18 _____)

19 I, THOMAS M. NEWMAN, pursuant to 28 U.S.C. § 1746, declare and state as follows:

20 1. I am a duly-appointed Assistant United States Attorney for the Northern District
 21 of California, and an officer of this Court, with office as above shown, and an attorney appearing
 22 of record for the United States in the above-entitled action.

23 2. This declaration is made in accordance with Civil L.R. 6-3 in furtherance of a
 24 Motion to Change Time of the Order to Show Cause hearing currently set for June 4, 2008.

25 3. A copy of the Petition, Court's Case Management Order, and the Order to Show
 26 Cause was personally served on respondent Ellis Ray Moseley on January 25, 2008.

27 4. In an effort to resolve this matter informally, I spoke with Mr. Moseley on
 28 January 30, 2008, who expressed a willingness to comply with the IRS summons.

1 5. To date, I have had many conversations with Mr. Moseley, although none of
2 those conversations have occurred in the past month.

3 6. Most recently, I called Mr. Moseley on May 27, 2008, to ask his progress in
4 complying with the summons and to see if he needed more time. I have not yet received a
5 response, but note that only one day has passed.

6 7. I had also contacted Mr. Moseley prior to filing this matter in an attempt to
7 resolve this matter before filing. Mr. Moseley returned my call, but after the case had already
8 been filed in this Court. Thereafter, Mr. Moseley stated that he retrieved records necessary to
9 (partially) comply with the summons and gave those to his accountant. Mr. Moseley stated that
10 he provided the information to his accountant for (1) assistance in complying and (2) because
11 some of the documents requested by the IRS include unfiled tax returns. For that reason, the
12 accounts needs the information to complete the unfiled returns. Mr. Moseley provided these
13 documents to his accountant immediately prior the tax filing season for this year. The Revenue
14 Officer, who is listed as a party in this case, has also been in contact with Mr. Moseley and his
15 accountant.

16 8. On May 13, 2008 I called and left a message with the IRS Revenue Officer to ask
17 her the status of this matter. Her voicemail message indicated she was away at that time, and has
18 not returned my call as of May 27, 2008.

19 9. Although I have not heard back from Mr. Moseley, I believe that he and his
20 accountant are in the process of complying with the summons. I was also informed that Mr.
21 Moseley's accountant could not start working on this matter until after April because of that
22 individual's workload.

23 10. Some of the statement contained herein are not made on first-hand knowledge,
24 specifically those related to Mr. Moseley's accountant. I believe all of the information to be
25 accurate, however, based on my conversations with the IRS Revenue Officer.

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1 Executed on this 28th day of May, 2008.

2 */s/Thomas M. Newman*
3 THOMAS M. NEWMAN
4 Assistant United States Attorney
5 Tax Division
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